

Message Text

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ACTION EB-07

INFO OCT-01 EUR-12 EA-07 ISO-00 CAB-02 CIAE-00 COME-00

DODE-00 DOTE-00 INR-07 NSAE-00 FAA-00 L-03 H-02 SS-15

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O R 100259Z FEB 76

FM AMEMBASSY WELLINGTON

TO SECSTATE WASHDC IMMEDIATE 866

INFO AMEMBASSY CANBERRA

AMEMBASSY LONDON

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E.O. 11652: N/A

TAGS: EAIR, NZ

SUBJ: CIVAIR: PAN AM AND NZ SPECIAL FARES PROBLEM

REF WELLINGTON 0473

1. THE FOLLOWING LETTER FROM SECRETARY FOR TRANSPORT, R.J. POLASCHEK ADDRESSED TO THE E/C COUNSELOR AND DATED FEBRUARY 10 WAS HAND DELIVERED TO THE EMBASSY AT 12:40 P.M. FEBRUARY 10.

"ON THURSDAY 5 FEBRUARY 1976 WE RECEIVED THROUGH ITS AUCKLAND OFFICE THE TEXT OF A CABLE SENT BY THE NEW YORK OFFICE OF PAN AMERICAN WORLD AIRWAYS FOR TRANSMISSION TO THIS OFFICE. BEFORE COMMENTING ON THE PROPOSALS CONTAINED IN THAT CABLED MESSAGE, I WOULD LIKE TO SET OUT THE SERIES OF EVENTS PRIOR TO THE RECEIPT OF THE ABOVE REFERENCED COMMUNICATION ALL INVOLVING THE UNITED STATES DESIGNATED AIR CARRIER.

"ON APRIL 10 1975 PAN AMERICAN ORALLY ADVISED THIS MINISTRY OF ITS INTENTION TO PAY WITHIN NEW ZEALAND TRAVEL AGENTS' COMMISSION IN EXCESS OF THAT APPROVED
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BY THE NEW ZEALAND GOVERNMENT THROUGH THE IATA

MACHINERY. A PUBLIC ANNOUNCEMENT OF THE AIRLINE'S DECISION TO DO THIS WAS MADE THE SAME DAY. ON THE FOLLOWING DAY PAN AMERICAN WAS ADVISED BY CABLE TO APPLY INTER ALIA ONLY COMMISSIONS WHICH HAD THE APPROVAL OF THE NEW ZEALAND GOVERNMENT. ON 2 MAY 1975 THE NEW ZEALAND GOVERNMENT DIRECTED ALL AIRLINES SERVING THIS COUNTRY TO APPLY ONLY THOSE FARES, RATES AND CONDITIONS OF TRAVEL, INCLUDING RATES OF COMMISSION WHICH HAD BEEN APPROVED BY THE NEW ZEALAND GOVERNMENT. ON THE SAME DAY AND AGAIN ON 7 MAY 1975 PAN AMERICAN REAFFIRMED PUBLICLY AND TO THIS OFFICE ITS INTENTION TO APPLY THE HIGHER RATES OF COMMISSION. WHILE I WILL NOT DWELL ON THE SUBSEQUENT INTERCHANGE OF CABLES THAT PASSED BETWEEN OUR EMBASSY IN WASHINGTON AND YOUR DEPARTMENT OF STATE ON THE SUBJECT OF THE TRANSPORT AGREEMENT THAT EXISTS BETWEEN OUR TWO COUNTRIES, IT SHOULD BE STATED THAT PAN AMERICAN BY ITS UNILATERAL AND IN OUR OPINION, ILLEGAL ACTION IN CONTINUING TO OFFER HIGHER COMMISSION RATES ON SALES WITHIN THIS COUNTRY, HAS OBTAINED FOR ITSELF A COMPETITIVE ADVANTAGE OVER THE DESIGNATED CARRIER OF NEW ZEALAND.

"AN "OPEN RATE" SITUATION HAS EXISTED FOR SOME YEARS ON FARES AND CONDITIONS OF TRAVEL BETWEEN NEW ZEALAND AND EUROPE INCLUDING THE MIDDLE EAST; THE LEVEL OF FARES TO BE CHARGED BEING FIXED THROUGH THE JOINT ACTION OF THE TWO GOVERNMENTS CONCERNED OR THE INDIVIDUAL ACTION OF ONE GOVERNMENT AND ACCEPTED BY THE OTHER PARTY DIRECTLY INVOLVED. ON 20 OCTOBER 1975 THE UNITED KINGDOM AND NEW ZEALAND GOVERNMENTS ADVISED AIR CARRIERS OF NEW EXCURSION FARES AND CONDITIONS OF TRAVEL WHICH WERE TO APPLY FOR TRAVEL BETWEEN THEIR TWO COUNTRIES AND OF THE CANCELLATION OF ALL EXISTING EXCURSION FARES. NEW ZEALAND ALSO TOOK STEPS TO CANCEL ALL EXISTING GOVERNMENT-DIRECTED EXCURSION FARES BETWEEN NEW ZEALAND AND OTHER PARTS OF EUROPE AND THE MIDDLE EAST PENDING RE-NEGOTIATION. (WE REGRET THAT DUE TO A COMBINATION OF CIRCUMSTANCES THERE WAS ONLY A VERY SHORT PERIOD BETWEEN NOTICE TO THE AIRLINES AND THE DATE OF EFFECTIVENESS OF THE NEW FARES. TO OVERCOME ANY PROBLEMS THAT AROSE THROUGH THIS, AIRLINES WHICH HAD CORRECTLY LIMITED OFFICIAL USE

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RE-FILED WERE GIVEN CERTAIN LICENCE TO HONOUR COMMITMENTS ALREADY MADE).

"PAN AMERICAN CHOSE TO IGNORE THE NEW ZEALAND GOVERNMENT DIRECTIVE AND CONTINUED TO PROMOTE AND SELL ILLEGALLY FARES NO LONGER APPLICABLE AND IN ADDITION APPLIED THEIR OWN RATES OF COMMISSION. THE AIRLINE WAS INFORMED BY LETTER DATED 1 DECEMBER 1975, THAT THEY WERE ACTING IN BREACH

OF THEIR LICENCE AND NEW ZEALAND LAW; AND THAT RATHER THAN INVOKE THE LAW, THE NEW ZEALAND AUTHORITIES AGAIN SOUGHT PAN AMERICAN'S CO-OPERATION IN RELATION TO AGENTS' COMMISSION AND THE FILING OF THE NEW FARES AS OUTLINED IN OUR LETTER TO ALL AIRLINES OF 20 OCTOBER 1975. A SUBSEQUENT FILING BY PAN AMERICAN IN DECEMBER COULD NOT BE APPROVED SINCE IT SOUGHT TO AMEND CERTAIN CONDITIONS LAID DOWN IN THE OCTOBER DIRECTIVE WHICH HAD BEEN AGREED TO BY THE UNITED KINGDOM AUTHORITIES AND ISSUED BY THE NEW ZEALAND GOVERNMENT. ON 19 JANUARY 1976 PAN AMERICAN ISSUED AN AGENT'S ADVICE TO THE TRAVEL TRADE OFFERING ADDITIONAL TRANSFERS WITH TWO DAY LAYOVERS ON TRAVEL TO LONDON AND DUROPE, WHICH WERE NOT PERMITTED BY THE OCTOBER DIRECTIVE, AND WHICH WERE NOT AND STILL ARE NOT AVAILABLE TO EITHER OF THE PRINCIPAL PARTIES TO THE DIRECTIVE - BRITISH AIRWAYS AND AIR NEW ZEALAND - OR TO ANY OTHER AIR CARRIER APPROVED TO PARTICIPATE IN THE CARRIAGE.

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"NOW AFTER A DELAY OF OVER THREE MONTHS SINCE THE NEW ZEALAND DIRECTIVE IN OCTOBER, PAN AMERICAN HAS SUBMITTED A FILING IN TERMS OF THE NEW ZEALAND OCTOBER DIRECTIVE. HOWEVER THIS FILING IS SUBJECT TO PAN AMERICAN ALONE HAVING THE RIGHT TO UTILISE THREE EXTRA TRANSFER

POINTS WITHIN UNITED STATES TERRITORY WITH LAYOVER PRIVILEGES AND WHICH POINTS ARE TO BE DENIED TO THOSE CARRIERS WHOSE THIRD AND FOURTH FREEDOM TRAFFIC IS INVOLVED. I WILL NOT DWELL ON THE FACT THAT THIS PROPOSAL COULD JUST AS EASILY HAVE BEEN MADE IN THE WEEK FOLLOWING THE ISSUE OF THE OCTOBER DIRECTIVE EXCEPT TO NOTE THAT NOVEMBER - FEBRUARY IS THE PEAK PERIOD FOR NEW ZEALANDER TRAVEL, AND BY OFFERING AS THEY DID TO THE NEW ZEALAND TRAVELLING PUBLIC, EXTRA TRANSFER/LAYOVER POINTS, PAN AMERICAN STOOD TO GAIN A VERY REAL MARKETING ADVANTAGE OVER THE 3RD AND 4TH FREEDOM CARRIERS INVOLVED.

"I AM SOMEWHAT DISTURBED AT THE TENOR OF THE PAN AMERICAN CABLE, A COPY OF WHICH IS ATTACHED.

"THE FILING AS PROPOSED IS UNACCEPTABLE. PAN AMERICAN AS THE 6TH FREEDOM CARRIER IN RELATION TO THE TRAFFIC INVOLVED IN THE DIRECTIVE, HAVE STATED NO INTENTION OF CEASING TO LIMITED OFFICIAL USE

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ACT IN BREACH OF THEIR AIR SERVICE LICENCE AND NEW ZEALAND LAW, BUT MERELY PROPOSED AMENDMENTS TO THE NEW ZEALAND DIRECTIVE WHICH WOULD GIVE THEM A SIGNIFICANT MARKETING ADVANTAGE OVER AIR NEW ZEALAND IN RESPECT OF THESE FARES, AND WOULD WITHOUT DOUBT ENSURE FOR THE UNITED STATES CARRIER A VERY SUBSTANTIAL SHARE OF THIS MARKET.

"IN DIRECT CONSEQUENCE OF THE PAN AMERICAN UNLAWFUL ACTION UTA HAS RECENTLY CHOSEN TO ACT IN BREACH OF ITS LICENCE, AND THE OCTOBER DIRECTIVE TO OFFSET ITS MARKETING DISADVANTAGES WHICH FOLLOWED PAN AMERICAN'S ACTION. UTA HAS OFFERED ON FARES OUT OF NEW ZEALAND TRANSFER/LAYOVER PROVISIONS SIMILAR TO THOSE PROVIDED BY THE U.S. CARRIER. THE ACTION BY PAN AMERICAN AND UTA IN THIS RESPECT CANNOT BE TOLERATED. FORMAL NOTICES HAVE BEEN SERVED ON BOTH AIRLINES TO COMPLY WITH ALL TERMS AND CONDITIONS OF THE NEW ZEALAND GOVERNMENT DIRECTIVE OF 20 OCTOBER BY MID-DAY WEDNESDAY 11 FEBRUARY. THAT IS TO SAY THEY MUST CEASE ALL ILLEGAL SALES OF UNITED KINGDOM AND EUROPEAN FARES EX NEW ZEALAND, OR IMMEDIATE LEGAL ACTION WILL BE INSTITUTED BEFORE THE SUPREME COURT OF NEW ZEALAND TO ENFORCE COMPLIANCE WITH THE TERMS OF THEIR INTERNATIONAL AIR SERVICE LICENCE.

"NEW ZEALAND HAS LONG ENJOYED CORDIAL RELATIONS ON CIVIL AVIATION MATTERS WITH THE UNITED STATES, AND PROBLEMS HAVE ALWAYS BEEN RESOLVED IN CONCILIATION AND IN A FRIENDLY MANNER. THE UNCHARACTERISTIC AND OPENLY DEFIANT ACTIONS OF PAN AMERICAN OVER THE PAST MONTHS IN ITS RELATIONS WITH THE NEW ZEALAND CIVIL AVIATION AUTHORITIES HAVE

CAUSED US SERIOUS CONCERN AND REGRETTABLY LED TO THE PRESENT SITUATION. WE ARE FIRMLY OF THE OPINION THAT AIRLINES DESIGNATED UNDER AN AIR TRANSPORT AGREEMENT MUST FIRST COMPLY WITH THE LAWS OF THE PARTIES TO THAT AGREEMENT, AND IF ONE OF THE CARRIERS DESIGNATED UNDER THE TREATY FEELS IT IS BEING UNFAIRLY DISCRIMINATED AGAINST IN TERMS OF THAT TREATY AS A RESULT OF THAT LAW, THERE IS ADEQUATE MACHINERY WITHIN THE FRAMEWORK OF THAT TREATY TO DEAL WITH THE CLAIM.

"SO SERIOUSLY DO THE NEW ZEALAND AUTHORITIES VIEW THE LIMITED OFFICIAL USE

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RECENT SERIES OF ACTION BY PAN AMERICAN THAT THEY ARE GIVING CONSIDERATION TO RESPECTFULLY REQUESTING THE UNITED STATES AUTHORITIES TO RE-EXAMINE THE DESIRABILITY OF THE CONTINUED DESIGNATION OF THAT CARRIER IN TERMS OF THE UNITED STATES - NEW ZEALAND AIR TRANSPORT AGREEMENT."

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